

**SUPREME COURT MINUTES  
TUESDAY, OCTOBER 7, 2008  
SPECIAL SESSION – PALM DESERT, CALIFORNIA  
ADDENDUM**

The Supreme Court of California convened for a special session at the California State University San Bernardino, Palm Desert Campus, Indian Wells Theater, 37500 Cook Street, Palm Desert, California, on Tuesday, October 7, 2008, at 9:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Kennard, Baxter, Werdegarr, Chin, Moreno, and Corrigan.

Officers present: Frederick K. Ohlrich, Clerk, and Gail Gray, Calendar Coordinator.

**CHIEF JUSTICE GEORGE:** Good morning. I am very pleased to welcome you to the special session of the California Supreme Court. I would like to begin by introducing my colleagues on the bench. To my immediate right is Justice Joyce Kennard. To her right, Justice Kathryn Werdegarr, and to her right, Justice Carlos Moreno. To my immediate left is Justice Marvin Baxter. To his left, Justice Ming Chin. To his left, Justice Carol Corrigan.

I would like to recognize the court's very able Clerk Administrator, Fritz Ohlrich, who, as is true in so many matters, has been of great assistance to the court in facilitating this oral argument session.

Now, it is my pleasure to introduce Justice Douglas Miller from Division Two of the Fourth Appellate District. He served as Chair of the Special Planning Committee for this event. I want to express the court's great appreciation to him and to other members of the committee—distinguished judges, lawyers, educators, and citizens of the county for—their hard work in organizing the various aspects of this educational event. Justice Miller.

**JUSTICE MILLER:** Good morning, Mr. Chief Justice and associate justices of the Supreme Court. I am privileged to be the first to honor you and to welcome you to the Coachella Valley. I have to take a sidelight, though, and tell you I debated whether I should say, "May it please the court," and I could officially say, "I argued before the Supreme Court," but I will not do that.

We are very honored and grateful that you have chosen the Coachella Valley to hold your special session of your oral argument in the year 2008, and also, it is always this hot, although could it be any bluer or any clearer? This has really been truly an exhilarating experience for all of us here in the Coachella Valley. It has really done and accomplished a number of things.

First, it has brought the community together, and it has brought out the community from the Berger Foundation to the Town Hall Center of Indian Wells to the three school districts, the principals, the city officials from all of the cities across our valley, especially La Quinta and Indian Wells, from the Riverside Superior Court, and the Desert Bar Association and this beautiful campus for California State San Bernardino.

We welcome you and are so proud that you have selected us. Also, it has inspired us to follow your example as the Chief Justice and as the associate justices to do community outreach and public service and to go out in our community, and we have again brought everyone in this community together to be a part of this, and we are so very proud of it. Again, I am privileged to welcome you and honored that you have chosen our valley to be here.

It is now my privilege to ask Justice Tom Hollenhorst who is my colleague, my mentor, and my friend to also welcome you, and then we will hear from Judge Harold Hopp who is the Supervising Judge of the Desert Judicial District of Riverside Superior Court. Thank you very much.

**CHIEF JUSTICE GEORGE:** Thank you, Justice Miller.

**JUSTICE HOLLENHORST:** Good morning. On behalf of my colleagues on the Fourth Appellate District, Court of Appeal in San Diego, in Riverside, and in Santa Ana, I would like to welcome the Supreme Court to the Fourth District.

This is a great event for all of us. It underscores, I think, the importance of the Rule of Law in our society. In a day and age of political turmoil, of lots of fighting on both sides of the political aisle, the importance of the courts remains paramount, I think, in resolving perceptions of the world and the appearance of our country.

It is with great pleasure that we have you here today for oral argument. I know that the young men and women who are attending oral argument today both have an opportunity to see great lawyers in front of a great court. Thank you again for being here.

**CHIEF JUSTICE GEORGE:** Thank you, Justice Hollenhorst. Judge Hopp.

**JUDGE HOPP:** Good morning on behalf of all of my colleagues from the Riverside County Superior Court. Welcome. We are delighted that you have chosen to come and visit our county and in particular the Coachella Valley this year.

It is no overstatement to say this is a most historic day for the Coachella Valley. I was trying to think of a parallel. The best I could come up with as a last major event like this is when George Patton trained his troops before the invasion of Africa. I am not sure that is quite as apt, but in any event today is a historic occasion, as you know. Last night you got to meet with judges and lawyers, and I hope you sensed that our legal community is honored and privileged to have you here.

I had the privilege of meeting about a 100 to 110 seniors of Coachella Valley High School on Friday to prepare for your visit, and I could tell that those kids are very excited about your visit. They have lots of questions about what you do, and how it is different from what we do in the superior court, and they are very much looking forward to watching you work today. They were all juniors last year when Justice Hollenhorst—and I believe Justice Miller and the Fourth District—held oral argument at their school, and some of them tried to sneak in to see some of those arguments and weren't able to because it was for seniors. So their teachers assured them their patience will get rewarded because they will get to watch you work today. Thank you for joining us and welcome.

**CHIEF JUSTICE GEORGE:** Thank you, Judge Hopp. It is now my pleasure to introduce Fred Jandt of the Palm Desert Campus of California State University, San Bernardino. We are indebted to him and to the university for providing this wonderful facility and for their participation in planning this event.

**MR. JANDT:** Thank you. Good morning. The Palm Desert campus is a branch campus of California State University San Bernardino. On behalf of its president, Albert K. Carnick, its students, faculty, and staff, I welcome the court to the campus.

Citizens of the Coachella Valley have long recognized the need for a four-year public university in the valley, a unique public-private partnership developed when in 1986 classes were first offered in temporary classrooms. Since then, this land and 35 million dollars have been donated by private citizens, local foundations, and local governments to build this campus. This campus is also unique in that many of its students are first generation college students and many are first and second generation U.S. citizens. With a median age of 27 and a student population of 73 percent women, our students study psychology, teaching, nursing, criminal justice, accounting, management, and other majors.

Through increased earning capacity of its graduates, the Palm Desert campus is adding millions to the local Coachella Valley economy. The Coachella Valley faces the challenge of a low college growth rate among its high school students. This is one of the reasons that the court's outreach program is important.

On behalf of our students, faculty and staff, and our community college partner, College of the Desert, I would like to express our appreciation for the court extending its outreach program to the Coachella Valley.

**CHIEF JUSTICE GEORGE:** Thank you, Dean Jandt. I would like to acknowledge some of the many other individuals and institutions who have contributed to organizing this event. Tina Howe from the university served as the chair of the facilities subcommittee and was instrumental in making the arrangements. Various members of the educational establishment are to be commended for their enthusiastic participation in this community outreach project. The Berger Foundation and Desert Town Hall—Indian Wells have provided financial and staffing support to ensure that a large number of students from the Coachella Valley could attend these court proceedings. I understand that Tim Parrott and Callie Chastain deserve special recognition for their efforts in coordinating the transportation of students to this facility.

The Desert Bar Association has arranged for groups of attorneys to visit each of the schools involved to explain to the students how the California Supreme Court functions, and the role of oral argument, and to provide some background concerning the cases they will hear. Furnishing this information is key to the success of the outreach programs, and we very much appreciate the effort of these lawyers. An additional resource is made available to the students and to the public by posting on the Supreme Court's Web site the written briefs filed in each case.

Finally, I want to commend the seniors of Cathedral City High School, and especially editor Denisse Gonzalez, who prepared the wonderful collection of materials entitled "One Desert" to provide a highly informative introduction for us to the Coachella Valley. My colleagues and I very much enjoyed reading it.

For the past several years, the court has held a special oral argument session once a year in various locations around the state. Traditionally, the court sits in oral argument four times a year in San Francisco, where we maintain our headquarters, four times in Los Angeles, and twice in Sacramento. The court does not hold oral argument in July and August, although we continue to consider petitions for review at our weekly conference and to draft and issue opinions in cases that have been argued.

Our goal in scheduling the special sessions is to work with the local court and the legal community, as well as the educational establishment, to offer a unique instructional opportunity designed to better inform the public about the courts and their role in our society. A large number of students will be in the courtroom throughout the session, and our proceedings also are being telecast to many more in classrooms around the county, as well as to the public in general. The California Channel performs a vital public service in televising these oral arguments which later are re-broadcast statewide.

When I became Chief Justice of California in 1996, 12 years ago, many of you in attendance here today were entering kindergarten. Just as your lives have undergone tremendous changes in that period, so too has the judicial branch. Back then there were 220 separate trial courts, divided between Municipal Courts, whose limited jurisdiction included misdemeanors and minor civil cases, and Superior Court, which handled felonies and civil matters in which larger claims were at issue.

Spread among the 58 counties of California, these courts received almost all of their funding from the counties. Courthouses were county owned. The condition of those courthouses and the financial well being of the individual courts often depended upon the relationship between the leadership of the local court and the county Board of Supervisors, as well as on the financial health of the individual county. During the last decades through the leadership of the Judicial Council—the constitutional body responsible for the statewide administration of justice, assisted by its staff arm, the Administrative Office of the Courts—we have brought about dramatic changes in the judicial branch. We have switched to a state funding of trial courts and unified them to a single level of trial court—one superior court in each of California's 58 counties—and we are well on our way to transferring ownership of all of our state's 451 courthouses from the counties to the state, under judicial branch management.

Riverside County can be proud that it made the very first of these courthouse transfers. I was pleased to be present at a ceremony when the Larson Justice Center in Indio, one of the most modern court facilities in California, transferred to the state in 2005.

About 10 days ago, Governor Schwarzenegger signed into law a bill that we sponsored in the Legislature authorizing the issuance of \$5 billion in bonds to build and renovate courthouses throughout our state including Riverside County. Many of these facilities are in very poor condition, susceptible to earthquake damage, in need of major repairs, or simply inadequate for the functions they were designed to perform.

The purpose of all these changes to California's court system remains constant, to improve access to fair and impartial justice for all Californians. But the challenges that remain are many. In some counties, as many as 85 to 90 percent of litigants in family law matters are not represented by an attorney. Individuals whose homes, jobs, and benefits are at risk may not be able to afford counsel. There is a need to translate more than 100 languages in California's courts every year.

Counties such as Riverside and San Bernardino have experienced enormous population growth. Riverside grew 32.6 percent from 2000 to 2006. I believe it was the fastest growing county in the United States during that period, while California as a whole grew only 7.6 percent. The number of judges, however, has lagged far behind, adding to delays and frustration especially for civil litigants, because criminal matters have priority under the law.

I appointed a special task force of judges from all over the state to come here to tackle Riverside's backlog of cases. Although their efforts resulted in the courts' being able to dispose of pending cases filed in the late 1990's so that apparently the oldest still unresolved cases are now from 2004, much remains to be done. Some of the case backlog will be further reduced when the Legislature provides the funding for the much-needed new judicial positions that we are obtaining. Riverside is at the top of the list for these new judgeships.

I invite all of you to visit the judicial branch's Web site at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov) to obtain a fuller picture of the structure and activities of California's court system. In order to encourage public understanding of the role of the courts, we have made outreach to the community a fundamental part of the operations of the courts at every level.

These visits also are educational for the court, because they provide an opportunity for us to learn more about the history of the area where we are hearing cases. I particularly enjoy finding historic connections between our court and the community where our special session is being held.

There have been at least two California Supreme Court justices with Riverside connections; Justice Curtis Wilbur, who was born in Iowa, spent some of his early life in Riverside. He held office as an associate justice of our court from 1918 to 1922 when he became Chief Justice. He served in that capacity until 1924, when he left to join the Administration of United States President Calvin Coolidge as Secretary of the Navy.

Associate Justice Marcus Kaufman served in Division Two of the Fourth Appellate District Court of Appeal (then located in San Bernardino, now in Riverside) from 1970 to 1987 when he was appointed to the California Supreme Court. He served for three years before retiring. Other members of the Riverside courts have been active participants in the activities of the Judicial Council. Justice Miller was a member of the Council when he served on the Riverside County Superior Court. Retired Justice James Ward, also from Division Two of the Fourth District Court of Appeal, is vice-chair of the Judicial Council's committee that rewrote California's jury instructions in plain language, and retired Riverside County Superior Court Judge Dallas Holmes served on the Council as a representative of the State Bar before his service on the bench and was active in the Council's jury reform efforts.

In short, Riverside County has contributed many statewide leaders to California's judicial branch. We hope that today's oral argument will inspire you to learn more about the courts, about Riverside's role in our state's judicial system, and about the ways in which you can have a positive impact on the administration of justice in California.

We also expect that by observing today's and tomorrow's sessions, you will obtain a better understanding of our nation's legal system and the rule of law that protects us all. Perhaps one day, some of the students listening attentively will be in our seats, or sitting at the counsel table ready to present crucial arguments that will help shape the future of the law. I certainly hope so.

Once again, on behalf of the California Supreme Court, I want to indicate how pleased we are to be here and to express our great appreciation to all of those who have made today's program possible. This experience demonstrates once again that the courts, lawyers, educators, and the community at large, working together can make a real contribution to education, to the rule of law, and to the administration of justice that benefits us all.

The court will now entertain questions from students present in the courtroom.

**STUDENT:** Good morning, Mr. Chief Justice and associate justices of Supreme Court. My name is Crystal Barroso, and I am from Indio High School, and I would like to ask how does the Supreme Court choose cases to review, and what qualifies a case to be heard by the Supreme Court?

**CHIEF JUSTICE GEORGE:** The court meets in weekly conference usually Wednesdays around our conference table, and we have anywhere from 150 to 350 or more petitions seeking review. With the largest judicial system anywhere in the world, we cannot take up every case that conceivably could have been decided incorrectly, so we look to cases that have the following criteria: Is there a substantial question of statewide importance, or is there a conflict in the law as decided by the Court of Appeal or intermediate Courts of Appeal in different cases? And sometimes the case meets both standards, and sometimes even then we don't take the case if it is not a good vehicle for us to perform our function of deciding cases to provide guidance and precedents for lower courts and for lawyers and for the public. So those are basically the standards that guide us in deciding which cases to take.

The one exception is the death penalty cases, which under the Constitution bypass the Court of Appeal and come directly to the Supreme Court. That is the procedure we employ. Thank you.

**STUDENT:** Thank you so much.

**STUDENT:** Mr. Chief Justice and associate justices of the Supreme Court. My name is Iris Perez. I am from Indio High School, and I would like to ask, is there a future for someone born outside the United States to achieve levels of the California justice system?

**CHIEF JUSTICE GEORGE:** I think I have the perfect justice to answer that question. Justice Kennard will respond to your question.

**JUSTICE KENNARD:** Thank you, Mr. Chief Justice. The answer to your question is a resounding yes, and I am living proof of that. Growing up in an internment camp on the island of Java during World War II and later in the jungles of New Guinea, having only the most rudimentary education which ended at age 14, because there simply was no more schooling to be had, I never dreamed that one day I would be lucky enough to live in America. I never thought that one day I would be a lawyer. I never thought that one day I would be a judge. I never thought that one day I would sit on the highest court of the State of California, the second woman in the court's history.

America gave me a chance to get an education when I was in my late 20's, and when I say "education," I should hasten to add college education, when I was in my late 20's well beyond what many would consider normal school age. America taught me that the boundaries of achievement are set largely by the individual. America gave me a chance to succeed against all odds. America taught me to dream more than that; America taught me to dream the impossible dream. So what I ask you is to go after your dreams. To quote a favorite line of mine from the poet, Langston Hughes: "Hold fast to dreams, for if dreams die, life is a broken-winged bird that cannot fly." Thank you.

**CHIEF JUSTICE GEORGE:** Thank you for your question.

**STUDENT:** Good morning Chief Justice and associate justices of the Supreme Court. My name is Jazay Vieyra, and I am from Western High School, and I would like to ask you how does a person become a judge, and what motivated you to become a lawyer and a judge?

**CHIEF JUSTICE GEORGE:** Justice Baxter will respond to that question.

**JUSTICE BAXTER:** Thank you for that excellent question. First of all, one must have been a member of the bar for at least 10 years before even becoming eligible to serve on the bench. But most often, a person becomes a judge in California or a justice through appointment by the Governor; however, when a superior court judge is about to complete his or her 6-year term, other lawyers may seek the office in a contested, non-partisan election.

You don't run as Republicans or Democrats; you run in a non-partisan election. A person becomes a justice on the Court of Appeal or on the Supreme Court through appointment or nomination by the Governor if, and only if, confirmed by the Commission on Judicial Appointments. Now, that body consists of the Chief Justice, the Attorney General and the Senior Presiding Justice of the Court of Appeal.

And justices face retention elections at the first gubernatorial election following their appointment for nomination, and again when seeking another 12-year term of office. In a retention election, there is no other candidate in the race. The voters are simply asked whether Justice so-and-so should be retained for another term. Yes or no.



Now, even before a person is appointed, the state bar's Commission on Judicial Nominees Evaluation investigates and evaluates the judicial applicant. The commission rates the applicant anywhere from exceptionally well qualified to not qualified, and the Governor will consider the evaluation before making the appointment. As you will note, the federal system is much different. Judges and justices in the federal courts are appointed by the President, confirmed by the United States Senate, and they have life tenures which means they never do face election.

You asked me what motivated me to become a lawyer and a judge? I was raised on a farm near Fresno and really did not know any lawyers. I entered Fresno State and initially majored in viticulture, the study of grapevines, thinking that I would follow my father's path into farming. My first thought of becoming a lawyer arose from getting involved in student government and serving as student body president at Fresno State which then led to becoming a CORAL Foundation fellow, which provided very intensive exposure to public affairs involving assignments to governmental corporate labor and community organizations.

Lawyers also seem to be in positions of leadership. The fact that lawyers have broad and varied career opportunities appealed to me a great deal. As a young lawyer in Fresno, I greatly admired the judges I appeared before and the commitment to public service that they made. I later had the good fortune to serve as Governor Deukmejian's appointments secretary and assisted him in the appointment of over 700 judges in California and thereby became very, very involved with the judicial branch.

I liked what I saw, and my dream came true when the Governor appointed me to the Court of Appeal in 1988 and to the Supreme Court in 1990. And let me assure you, I am a very, very happy camper. The work is interesting; it is challenging, and it is extremely fulfilling. Thank you very much.

**CHIEF JUSTICE GEORGE:** Thank you for your question.

**STUDENT:** Good morning, Mr. Chief Justice and associate justices of the Supreme Court. My name is Daniel Flores. I am from Indio High School. I would like to ask how do you put your personal beliefs and feelings aside in deciding a case, and do they ever make it difficult for you to decide a case?

**CHIEF JUSTICE GEORGE:** Justice Werdegarr will respond to that question.

**JUSTICE WERDEGAR:** Daniel, thank you for that question. I think a lot of people wonder how much a judge's personal preferences, beliefs, and feelings influence their decision, and I have to start with the second part of your question; do my personal beliefs ever make it difficult to decide a case? And the answer is yes, sometimes.

When the answer that the law leads me to is different than what I would prefer the answer to be, how do I put aside my personal feelings and beliefs? Well, first of all, I have on a number of occasions had to write decisions that were contrary in their result to what I would have preferred. So how do any of us do that? We are required as judges to be impartial. When we put on our black robes, it really symbolizes that we are putting aside who we are in our private life, and what we think, and how we vote. We are putting that aside and serving what we like to call the “rule of law.”

So the attorneys argue before us. They cite cases to us. They tell us—each side tells us differently but they tell us which way the case must go, and we try to the best of our human ability to come to an understanding of what the law requires which is different from what we might prefer.

At the California Supreme Court level, as opposed to the trial court level, when we decide a case, it impacts the parties throughout the case, but it also states a rule of law that is going to influence everything else that is like that—other similar situations. So we are not just deciding who wins and loses; we are stating a rule of law that is going to govern that situation whether it is a business case or a personal injury case. But it is going to govern that case-similar situation down the road. So we try the best we can to put aside our personal beliefs and to decide the case according to the law. Thank you.

**STUDENT:** Thank you.

**CHIEF JUSTICE GEORGE:** Thank you for your question.

**STUDENT:** Good morning, Chief Justice and associate justices of the Supreme Court. My name is Amber Montes, and I am from Indio High School. I would like to ask you, do political leaders influence or try to influence the court’s decision on important issues?

**CHIEF JUSTICE GEORGE:** Justice Chin will respond to your question.

**JUSTICE CHIN:** Thank you, Amber. That is an interesting question; it is also a very important question, and there are appropriate ways in which political leaders can make their thoughts known to the court, and there are inappropriate ways. I like to be positive, so let’s talk about the appropriate ways.

Many times, the State of California will be a party to the litigation, as in all criminal cases and in many civil cases. In those instances it is perfectly appropriate for the state to file a brief with the court and for the legislative and executive persons who represent them to argue that case before the court. Those are perfectly appropriate ways for political leaders to express their opinions to the court. In many cases, the State of California will want to file what we call—and though they are not a party to the case—they will want to file what we call friends of the court

briefs or amicus briefs. Those are also very appropriate ways for the political leaders to express their views to the court.

Let's talk about some of the inappropriate ways. I have never been called by a political leader either from the executive or the legislative branch to talk about a pending case before the court, and I doubt that any of my colleagues have, because that would be totally inappropriate. The more difficult areas, the sometimes gray areas; I don't think they are grays, but it is important for the judicial branch not to just have the judicial understanding but to have institutional independence, and in order to do that, the judicial branch needs an adequate budget. Not a grand budget. We need adequate court facilities, not grand facilities but adequate facilities for the court to operate.

Many times we will get into hassles with the Legislature or disputes with the Legislature, and they will hold the judicial budget hostage and not grant sufficient funds for the court to operate. This, I think, is totally inappropriate. The Chief Justice noted last night that the Legislature passed a 5 billion dollar bond issue for court facilities. This was sorely needed because so many of the court facilities are under par or frankly, dangerous. So that bond issue, which is signed by the Governor and will go forward, is a very important institutional independence issue. So that in a nutshell are appropriate and inappropriate ways for the executive and legislative leaders to influence the courts. Thank you for your question.

**STUDENT:** Thank you.

**CHIEF JUSTICE GEORGE:** Thank you.

**STUDENT:** Mr. Chief Justice and associate justices of the Supreme Court. My name is Brenda Sanchez, and I am from Indio High School. And I would like to ask, do the changes that take place in society influence the court's decisions?

**CHIEF JUSTICE GEORGE:** Justice Moreno will respond to your question.

**JUSTICE MORENO:** Thank you for that question. As my colleague Justice Werdegarr just explained briefly, judges are obligated to decide cases based on the written text of the statute and the Constitution; that is, we are to decide cases impartially.

Now, there are a series of established rules of statutory construction that really help us do that, but we all realize that we are not completely isolated from changes that are taking place in society all around us; that is, we can't place the blinders on the changes that are happening. So we all have our own personal experience and those of our families and—that we draw upon that shape our view of the world and of changes that are happening all around us.

Let me just give you a couple of examples. Attitudes toward women in society, the role they play in the work force, have changed dramatically. There were few women who were attorneys not that long ago. Justice Kennard is only the second woman to sit on the California Supreme Court, now one-third of the profession; that is, a third of the lawyers are now women, and I understand that in the law schools, half of the law students are women. It also wasn't that long ago that women could not serve on juries. Now, some of these changes came about through court decision, some came about through legislation that has changed, and statutes. Another example would be technology advances and changes in technology required the court to examine many new areas of the law.

There have been changes in the way contracts are negotiated, and commerce generally has become much more complex. We are a very different society now. Many of us conduct transactions over the Internet versus going to a store. We have things like electronic signatures that you could do over the Internet. So in short, we see very complex transactions all over the world. Still, when disputes arise, the courts must resolve them in ways that we never thought we would have to afford.

So my final point is that sometimes changes in society influence how the court decides cases, and sometimes decisions of the court anticipate the changes that are happening in society. Many times it is hard to tell what comes first, the changes in society, or the changes of the society that the court has anticipated. Thank you.

**STUDENT:** Thank you.

**CHIEF JUSTICE GEORGE:** Thank you for your question.

**STUDENT:** Mr. Chief Justice and associates justices of the Supreme Court. My name is Amanda Aguilar, and I am from West Shores High School. I would like to ask you, could you outline the main difference between trial courts and appellate courts?

**CHIEF JUSTICE GEORGE:** Justice Corrigan will give that explanation.

**JUSTICE CORRIGAN:** I will do my best, Amanda. Actually, there is a big distinction because what happens in the trial court is the foundation for the whole rest of the case. So that's where the case comes alive. That's where the lawyers stake out their legal positions by the way they plead the case, and the way they argue the case. That's where witnesses testify, where jurors vote. So everything that happens after that is based on what happens in trial court. When the case comes up on appeal, the focus is very different. We are not trying to resolve the facts, for example.

A juror will have to listen to people that testify, and some people will say, “no, it happened this way,” and some people will say, “no, it happened that way”, and the jurors make that call. Or if it’s a judge trial, the judge makes that call. Generally speaking, we are bound by those factual decisions that are made in the trial court. We don’t hear testimony. There are not any jurors.

We are focusing early on two questions; was the trial conducted properly according to rules of procedure and the Constitution, and was the law properly interpreted and applied? So when it gets up to the Court of Appeal or the Supreme Court, we are looking not so much at the facts, because we sort of take those as a given, and we look at the legal questions to make sure that the law is properly applied in a trial court, and that all the trial courts who come after could look to the opinion of the Court of Appeal or the Supreme Court and make sure they do it right in the future. So it is a little different in focus. Good question.

**STUDENT:** Thank you.

**CHIEF JUSTICE GEORGE** Thank you for your question.

**STUDENT:** Good morning, Mr. Chief Justice and associate justices of the Supreme Court. My name is Ivette Lopez, and I am from Indio High School, and I would like to ask, which crimes may be punished by the death penalty?

**CHIEF JUSTICE GEORGE:** I will answer that question. Homicide is the general category for crimes that involve killing an individual, and we have, starting at the level of offenses that are considered less serious and are punishable by lesser punishments, voluntary and involuntary manslaughter, and then murder is divided into two degrees, first degree and second degree murders.

First degree murder is the more serious, maybe premeditation or the killing was committed in the course of one or more specified crimes such as a killing that occurs in the course of a robbery, a rape, burglary, or some other offenses, and there are some other categories as well. But even first degree murders themselves are not subject to the death penalty unless there is a certain additional element that is charged by the prosecutor and found true by the jury and that is that there was a special circumstance that occurred in the course of the commission of the crime. Those serve to narrow the categories of even first degree murders to only subject the most serious to the possibility of the death penalty. And those are set forth in some detail. They have to be put before the jury. That in turn does not render the death penalty automatic, it just means that there is then a second part of the trial.

The first part of the trial will involve the jury’s finding of whether a defendant is guilty of murder; if so, is that first degree, and if so, is there a special circumstance? If and only if there is a special circumstance, one or more is found true, does the jury move on to a second part of the trial.

At that point in the trial, the prosecutor is allowed to bring in “aggravating evidence” as it is called which means the other behavior involved by the defendant that might warrant the death penalty, past crimes, other acts maybe that did not amount to crimes, the person’s attitude toward the crimes that he or she has committed, and so forth.

The defendant, on the other hand, could put forth “evidence in mitigation” as it is called, showing that there were perhaps explanations that were not sufficient to make the person not guilty but still warrant the death penalty imposed, that life in prison without possibility of parole imposed, because that’s the alternate punishment. Once the special circumstances are found true, then there will be at least life without possibility of parole, and the alternative is the death penalty in that situation. So the defendant has the full opportunity to put forth not only mitigating behavior that might involve the crime but also his or her personal background showing perhaps some mental problems—which again don’t rise to a defense of not guilty by reason of insanity—but might show lesser culpability or perhaps a very troubled childhood involved with harsh behavior towards the defendant, things of that sort.

Then the jury retires with some guidelines provided by the judge in his or her instructions to the jury, to decide under all of the circumstances of the crime and the mitigating and aggravating evidence which punishment is the most appropriate. But subject to those guidelines, that is left entirely within the discretion of the jury which punishment to impose.

**STUDENT:** Thank you very much.

**CHIEF JUSTICE GEORGE:** Thank you.

**STUDENT:** Mr. Chief Justice and associate justices of the Supreme Court. My name is Mayra Koza, and I am from West Hills High School. And I would like to ask what is one of the most difficult cases you have had to deal with?

**CHIEF JUSTICE GEORGE:** Justice Kennard will respond to that difficult question.

**JUSTICE KENNARD:** A few months ago, this court decided that the California Constitution guarantees same-sex couples a right to marry. That case was extremely difficult for many reasons.

First, the state Constitution uses general language to guarantee persons a right to privacy, a right to due process of law, and a right to equal protection of the laws. Deciding what these broadly worded guarantees mean in the context of same-sex marriage was particularly challenging, at least for me.

Second, society's attitudes toward sexual orientation have been undergoing rapid change, and the Legislature in response has dramatically altered the legal landscape by enacting statutes that reflected these changes and made into law rights that same-sex couples didn't have before. This court had to consider how those new statutes enacted by the Legislature affected the constitutional questions presented to us.

Third, this court received dozens of friend of the court briefs, not only from individuals but also from organizations, and these briefs came from across the country to us. We had to carefully review those briefs and try to get a handle on the very difficult issues mentioned in the various briefs.

Finally, this was a case on which emotions ran high, very high. As judges, we have to take special care to isolate ourselves from the passion of the advocates on either side and to concentrate instead on the logical force of their arguments and on the legal principles established in this court's past decisions. To sum up, the same-sex-marriage case was one of the most difficult cases that I had to decide in my nearly 20-year tenure on the court. Thank you.

**CHIEF JUSTICE GEORGE:** Thank you for your question.

**STUDENT:** Mr. Chief Justice and associate justices of the Supreme Court. My name is Eric Cecena. I am from Indio High School. I would like to ask, some people feel that juries should be abolished. Do you agree, or do you feel that juries are an important part of our legal system?

**CHIEF JUSTICE GEORGE:** Justice Baxter will respond to your question.

**JUSTICE BAXTER:** Thank you for the question. My answer will be very direct, and that is that juries should not be abolished, and that they are a very, very important part of our legal system. Even before the United States Constitution was drafted, the importance of the right to trial by an impartial jury was already widely recognized and accepted in the English common law.

In criminal cases, trial by jury was viewed as the principal safeguard against arbitrary governmental power for the criminally accused. The English legal scholar Blackstone called the right to a jury trial a strong barrier between the liberties of the people and the royalty of the crown, and the right to impartial trial by jury in criminal cases is embodied in the Sixth Amendment of the United States Constitution. The constitutions of every state in the union likewise protect the right to jury trial in criminal cases in one form or the other. It is found and described in Article 1, Section 16 of the California Constitution as a right that shall be "secured to all," and our constitutional provision in California encompasses both criminal and civil cases.

Our Constitution permits the joint waiver of a jury trial and except for felony trials permits juries of less than 12 persons where parties agree. In the 1968 case of *Duncan v. Louisiana*, the United States Supreme Court said that, and I will quote: “The guarantees of jury trial in the Federal and State Constitutions reflect a profound judgment about the way in which law should be enforced and justice administered.” And the high court went on to explain that it reflects a fundamental decision about the exercise of official power, a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power found expression in the criminal law in the insistence upon community participation in the guilt or innocence through the juries of one’s peers.

So in view of our history, and in view of the constitutional protections afforded, I don’t foresee any credible movement to abolish juries, especially in criminal cases, but there does seem to be a modern trend in California in civil cases for the parties to voluntarily use smaller juries in an effort to simplify and streamline trials in our overburdened civil courts.

**STUDENT:** Thank you.

**CHIEF JUSTICE GEORGE:** Thank you for your question.

**STUDENT:** Good morning, Mr. Chief Justice and associate justices of the Supreme Court. My name is Adi Lopez, and I am a student from Indio High School. I would like to ask if you could elaborate on what it means when a court follows legal precedent, and if previous decisions make it harder for a judge to rule on new cases.

**CHIEF JUSTICE GEORGE:** Justice Werdegar will respond to your question.

**JUSTICE WERDEGAR:** Your question is what does it mean when a court follows legal precedent, and as you probably know precedent means what preceded, what came before. So for a court to follow legal precedent means that if the issue before the court, the legal question, has been decided before, then the court must decide the question the same way.

We follow precedents, and this gives the law stability and predictability which is what the citizens need. They need to know what consequences their actions will have, so we follow legal precedent. The California Supreme Court does not have to follow something that a lower court has decided. We are the highest court that speaks to the law in the State of California. So other courts are supposed to follow us.

Now, your question also said, do older decisions make it harder for judges to rule on new cases, and picking up on what I just said, in one sense, no. It makes it easy if the old case has decided the issue before us, we could just follow that precedent. But in another sense, the answer is yes. It makes it hard for us if the old decision is out of date, if it is not responsive to changed conditions. And we heard Justice Moreno speak about changed conditions, and you heard Justice



Kennard speak about changed conditions and society dealing with new issues and personal, social relationships. So if the old case is not responsive to those conditions, the court has to either follow it anyway, that would be a lower court following what we have said or us following something we had said before many, many years ago, or the court has to depart from that precedent and explain why.

Now, courts do not like to depart from old decisions because it is unsettling. People may have relied on the old decision in their actions. On the other hand, in the appropriate circumstance, we have to. We don't want the law to be ossified, to be written in cement and not responsive. So what we are faced with is a tension between stability, which is very, very important with respect to the law, and flexibility, which means we do respond to the concerns of our citizens.

There is no answer in a given situation whether the court will follow the old case or move away from that and explain itself. So the question goes to the heart of our common law system, and that's the system of judicially made law. The Legislature is something else. It states the statute, and you have to follow it. Thank you.

**STUDENT:** Thank you for your time.

**CHIEF JUSTICE GEORGE:** Thank you for your question.

**STUDENT:** Good morning Mr. Chief Justice and associate justices of the Supreme Court. My name is Maria Rubio, and I am from Indio High School, and I would like to ask what are some of the advantages and disadvantages of being a Supreme Court Justice?

**CHIEF JUSTICE GEORGE:** Justice Chin will speak to that.

**JUSTICE CHIN:** How long do you have? Thank you. That's a very interesting question. The advantages far outweigh the disadvantages and since we have a limited amount of time, I will give you two examples of advantages and two examples of the disadvantages.

First of all, who could complain when you get to work with six talented people like this? But this is a very collegial court. It is a real pleasure every day to come to work and deal with difficult issues. Do we disagree? Of course. I have disagreed with one or more of my colleagues in the last 12 years many, many times. But in spite of those disagreements, we always try not to be disagreeable because there is always another case around the corner that we have to deal with.

The second advantage is we are always dealing with cutting edge, challenging, difficult issues. We end up with the toughest cases in the state. All of these have already been decided once. Because these issues are so challenging, it makes the job really interesting all of the time.

There are some disadvantages too in that the workload is bone crushing. I will give you an example, and this is probably ancient history to you but there is a —this is an example of the workload of the Supreme Court. There is a sitcom called I Love Lucy—what's that—starring Lucille Ball, and there was an episode where she was boxing candy on the conveyer belt, and the conveyer belt moves faster and faster and faster, and she has trouble boxing the candy. She starts stuffing it in her pockets, sticking it in there, and throwing it where it is not supposed to go. That's not what we do when we face a bone-crushing workload, but that is one of the disadvantages. The work keeps coming. Even when we are on vacation, the work keeps stacking up.

The other disadvantage that I would like to mention to you is that we are not appointed for life. We have limited terms so each of us has to go on the ballot and stand for a retention election every 12 years. In 2010 if I choose to stay on the court, I will be on the ballot again, and if you are 18 years old at this time, please remember me. Thank you.

**CHIEF JUSTICE GEORGE:** Thank you.

**STUDENT:** Mr. Chief Justice and associate justices of the Supreme Court. My name is Edel Cruz. I am from Indio High School. I would like to ask, does a person's gender or race affect how he or she is treated in the courtroom,

**CHIEF JUSTICE GEORGE:** Justice Moreno will respond to that question.

**JUSTICE MORENO:** Remember the name Moreno when you remember Chin. Yes. Substantial changes and attitudes towards gender and race in society and, in the courtroom in the past several decades; there have been many, many changes.

I mentioned earlier that at one time women could not serve on juries. I believe or know one time over 100 years ago a statute provided, and this court upheld that statute that said certain races could not testify against a white person, that is, their testimony was inadmissible. Traditionally, few women and racial minorities served as attorneys, court staff and especially as judges, so stereotypes about the roles that women and racial minorities many times did enter the courtroom.

Now, that has changed substantially in my 33 years as an attorney and as a judge. Now, speaking for judges, we go through intensive training to be able to identify and to eliminate any kind of inappropriate bias. In fact, there are specific classes that we take, many incorporating videos and role playing and so forth, to help us identify bias. Attorneys are also required as part of their continuing legal education to take courses to help them identify and eliminate bias. In fact, in any courses the judges take, and we are required to have continuing legal education, every course tries to incorporate some element to help us identify and eliminate bias, because we all agree that justice should be blind and impartial.

Now, there are still some biased decisions in a courtroom. Some of that is by attorneys, and unfortunately some of that is by judges. We know that it is wrong, and we should do everything we can to eliminate it. In fact, some judges and attorneys have been disciplined, that is, judges have been removed from the bench who have displayed a severe or persistent bias in the courtroom. It is something that we are aware of, and we are doing everything we can to help eliminate any kind of gender or racial or other types of bias that occurs in society.

**STUDENT:** Thank you.

**CHIEF JUSTICE GEORGE:** Thank you for your question. Now to hear our last question.

**STUDENT:** Mr. Chief Justice and associate justices of the Supreme Court. My name is Genesis Barabino, and I am from West Shores High School. And I would like to ask what happens to a judge when he breaks the law? Does the judge lose his or her job?

**CHIEF JUSTICE GEORGE:** Justice Corrigan will respond.

**JUSTICE CORRIGAN:** There is no linking here between who answers the question. That is, your question, because obviously judges have to follow the law just like everybody else, and if a judge breaks the law, it is a particularly bad thing.

So a judge can be prosecuted in court just like anybody else, and on top of that, the judge is also subject to a whole code of judicial ethics that touch on lots of things beyond what is in the criminal law. So in addition to the regular prosecution, there is a Commission on Judicial Performance, and that body is charged to do nothing but supervise the way that judges do their job.

So if there is an accusation that a judge has committed misconduct, the Commission in addition to anything that happened in a criminal courtroom will do an investigation and decide whether or not the allegations are accurate. And if they are found to be accurate, the Commission can make a recommendation that a judge be publicly criticized or subjected to a whole range of penalties up to and including being removed from their job. So judges very appropriately are subject to all kinds of restraints, both the same ones that everybody in California is, and an additional rule of ethics, and we are subject to a lot of people watching the way we do our job, and that's the way it should be.

**STUDENT:** Thank you.

**CHIEF JUSTICE GEORGE:** Thank you for your question. The student questions have certainly been excellent, and I think they have served to illuminate our judicial and legal systems. And I appreciate them, and I know my colleagues do as well. The Reporter of Decisions is directed to spread the special proceedings upon the minutes of the court for publication in the Official Reports of the decisions of the court. The Clerk will now call the morning calendar.